

# Rules and Regulations

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2007-0389; Directorate Identifier 2007-NM-222-AD; Amendment 39-15450; AD 2008-07-09]

RIN 2120-AA64

#### Airworthiness Directives; Various Transport Category Airplanes Equipped With Auxiliary Fuel Tanks Installed in Accordance With Certain Supplemental Type Certificates

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** We are adopting a new airworthiness directive (AD) for various transport category airplanes. This AD requires deactivation of Southeast Aero-Tek, Inc., auxiliary fuel tanks. This AD results from fuel system reviews conducted by the manufacturer, which identified potential unsafe conditions for which the manufacturer has not provided corrective actions. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

**DATES:** This AD is effective May 2, 2008.

#### Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800-647-5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M-30, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590.

#### FOR FURTHER INFORMATION CONTACT:

Robert Bosak, Aerospace Engineer, Propulsion and Services Branch, ACE-118A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349; telephone (770) 703-6094; fax (770) 703-6097.

#### SUPPLEMENTARY INFORMATION:

##### Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to various transport category airplanes equipped with auxiliary fuel tanks installed in accordance with certain supplemental type certificates (STCs). That NPRM was published in the **Federal Register** on January 2, 2008 (73 FR 84). That NPRM proposed to require deactivation of Southeast Aero-Tek, Inc., auxiliary fuel tanks.

##### Comments

We gave the public the opportunity to participate in developing this AD. We

considered the comment received from the one commenter.

#### Request To Clarify Proposed Applicability

FedEx Express requests that we clarify the applicability statement in the NPRM to state that the AD does not apply to airplanes where auxiliary tanks were removed by an FAA-approved method. FedEx states that the unsafe condition does not exist on these airplanes.

We agree that the unsafe condition does not exist on the airplanes FedEx describes. We have included a statement in paragraph (c) of the final rule that excludes these airplanes.

#### Explanation of Change to Product Identification Line

We have changed the product identification line of the AD from "Various Transport Category Airplanes" to "Southeast Aero-Tek, Inc." In ADs written against products with an STC, that statement is intended to identify the name of the STC holder.

#### Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

#### Costs of Compliance

The following table provides the estimated costs for the 37 U.S.-registered airplanes to comply with this AD. Based on these figures, the estimated costs for U.S. operators could be as high as \$239,760 to prepare and report the deactivation procedures, and \$133,200 to deactivate tanks.

#### ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Individual cost
Report .....	1	\$80	None .....	\$80, per STC.
Preparation of tank deactivation procedure .....	80	80	None .....	\$6,400, per STC.
Physical tank deactivation .....	30	80	\$1,200 .....	\$3,600, per airplane.

#### Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue

rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: "Aviation Programs," describes in more

detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII,

Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

### Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979), and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

- Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

### PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

#### § 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new AD:

#### 2008-07-09 Southeast Aero-Tek, Inc.:

Amendment 39-15450. Docket No. FAA-2007-0389; Directorate Identifier 2007-NM-222-AD.

### Effective Date

- (a) This airworthiness directive (AD) is effective May 2, 2008.

### Affected ADs

- (b) None.

### Applicability

(c) This AD applies to airplanes, certificated in any category, equipped with auxiliary fuel tanks installed in accordance with specified supplemental type certificates (STCs), as identified in Table 1 of this AD. This AD does not apply to any airplane where an auxiliary fuel tank was installed in accordance with an STC identified in Table 1 of this AD and subsequently removed by an FAA-approved method.

TABLE 1.—AFFECTED AIRPLANES

Airplanes	Auxiliary tank STC(s)
Boeing Model 727-100 series airplanes.	ST01587AT
Boeing Model 727-200 and -200F series airplanes.	SA2033NM, SA1474SO
McDonnell Douglas Model DC-9-14 airplanes.	SA1334NM
McDonnell Douglas Model DC-9-32, DC-9-32 (VC-9C), DC-9-32F, DC-9-33F, and DC-9-32F (C-9A, C-9B) airplanes.	SA1710SO, SA1358NM

### Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer, which identified potential unsafe conditions for which the manufacturer has not provided corrective actions. We are issuing this AD to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

### Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

### Report

(f) Within 45 days after the effective date of this AD, submit a report to the Manager, Atlanta Aircraft Certification Office (ACO), FAA. The report must include the information listed in paragraphs (f)(1) and (f)(2) of this AD. Under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD, and assigned OMB Control Number 2120-0056.

(1) The airplane registration and auxiliary tank STC number installed.

(2) The usage frequency in terms of total number of flights per year and total number of flights per year for which the auxiliary tank is used.

### Prevent Usage of Auxiliary Fuel Tanks

(g) On or before December 16, 2008, deactivate the auxiliary fuel tanks, in accordance with a deactivation procedure approved by the Manager, Atlanta ACO. Any auxiliary tank component that remains on the airplane must be secured and must have no effect on the continued operational safety and airworthiness of the airplane. Deactivation may not result in the need for additional instructions for continued airworthiness.

**Note 1:** Appendix A of this AD provides criteria that should be included in the deactivation procedure. The proposed deactivation procedures should be submitted to the Manager, Atlanta ACO, as soon as possible to ensure timely review and approval.

**Note 2:** For technical information, contact Randy Smith, President, Southeast Aero-Tek, Inc., 675 Oleander Drive, Merritt Island, Florida 32952; telephone (321) 453-7876; fax (321) 453-7872.

### Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Atlanta ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

### Material Incorporated by Reference

- (i) None.

### Appendix A—Deactivation Criteria

The auxiliary fuel tank deactivation procedure required by paragraph (g) of this AD should address the following actions.

(1) Permanently drain auxiliary fuel tanks, and clear them of fuel vapors to eliminate the possibility of out-gassing of fuel vapors from the emptied auxiliary tank.

(2) Disconnect all electrical connections from the fuel quantity indication system (FQIS), fuel pumps if applicable, float switches, and all other electrical connections required for auxiliary tank operation, and stow them at the auxiliary tank interface.

(3) Disconnect all pneumatic connections if applicable, cap them at the pneumatic source, and secure them.

(4) Disconnect all fuel feed and fuel vent plumbing interfaces with airplane original equipment manufacturer (OEM) tanks, cap them at the airplane tank side, and secure them in accordance with a method approved by the FAA; one approved method is specified in Advisory Circular 25-8 Fuel Tank Flammability Minimization. In order to eliminate the possibility of structural deformation during cabin decompression, leave open and secure the disconnected auxiliary fuel tank vent lines.

(5) Pull and collar all circuit breakers used to operate the auxiliary tank.

(6) Revise the weight and balance document, if required, and obtain FAA approval.

(7) Amend the applicable sections of the applicable airplane flight manual (AFM) to indicate that the auxiliary fuel tank is deactivated. Remove auxiliary fuel tank operating procedures to ensure that only the OEM fuel system operational procedures are contained in the AFM. Amend the Limitations Section of the AFM to indicate that the AFM Supplement for the STC is not in effect. Place a placard in the flight deck indicating that the auxiliary tank is deactivated. The AFM revisions specified in this paragraph may be accomplished by inserting a copy of this AD into the AFM.

(8) Amend the applicable sections of the applicable airplane maintenance manual to remove auxiliary tank maintenance procedures.

(9) After the auxiliary fuel tank is deactivated, accomplish procedures such as leak checks and pressure checks deemed necessary before returning the airplane to service. These procedures must include verification that the airplane FQIS and fuel distribution systems have not been adversely affected.

(10) Include with the operator's proposed procedures any relevant information or additional steps that are deemed necessary by the operator to comply with the deactivation and return the airplane to service.

Issued in Renton, Washington, on March 20, 2008.

**Dionne Palermo,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. E8-6298 Filed 3-27-08; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

#### 19 CFR Part 351

[Docket No. 080225304-8463-01]

**RIN 0625-AA77**

#### Import Administration, Withdrawal of Regulations Governing the Treatment of Subcontractors ("Tolling" Operations)

**ACTION:** Interim final rule.

**SUMMARY:** Import Administration issues this interim final rule for the purpose of withdrawing its regulation governing the treatment of tollers or subcontractors for purposes of determining export price, constructed export price, fair value, and normal value in antidumping duty proceedings.

**DATES:** This interim final rule is effective on March 28, 2008. Although the amendment made by this Interim Final Rule is effective on March 28,

2008, Import Administration seeks public comments. To be assured of consideration, written comments must be received not later than April 28, 2008.

**ADDRESSES:** Comments on this Interim Final Rule must be sent to David M. Spooner, Assistant Secretary for Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, Pennsylvania Avenue.

**FOR FURTHER INFORMATION CONTACT:** Michael Rill, telephone 202-482-3058.

**SUPPLEMENTARY INFORMATION:** The Department promulgated the regulation governing the treatment of tollers or subcontractors in antidumping duty proceedings on May 19, 1997 ("Antidumping Duties; Countervailing Duties; Final Rule") (62 FR 27296, 27411 (May 19, 1997)). The Department regulation, 19 CFR 351.401(h), was intended to ensure, in calculating a dumping margin on merchandise determined to be within the scope of an antidumping order, that the Department's analysis is focused on the party setting the price of subject merchandise when the manufacture of such merchandise is subcontracted to another company. However, the regulation has been interpreted by the Court of International Trade as having the unintended effect of bestowing the status of "foreign manufacturer" or "producer" upon parties in the United States that otherwise would have assumed the status of purchasers of subject merchandise. See *USEC Inc. v. United States*, 281 F. Supp. 2d 1334 (2003), *aff'd on other grounds Eurodif v. United States*, 411 F.3d 1355, 1364 (Fed. Cir. 2005). This interpretation could restrict the Department's exercise of its discretion and could require the Department to identify the incorrect entity as the seller of subject merchandise, which would adversely affect the Department's antidumping determinations.

If a party that customarily assumes the status of a "purchaser" is bestowed with the status of "foreign manufacturer" or "producer", the proper application of the law is thwarted in a variety of ways. First, in some cases, the Department may have no basis upon which to make antidumping duty determinations because the customers who obtain the status of "foreign producer" make no sales of subject merchandise, but instead consume the merchandise themselves. In such cases, the Department would be unable to calculate a dumping margin. In other cases, the Department's determination of the margin of dumping could be

distorted or miscalculated because the incorrect U.S. sales were identified as the relevant sales under the regulation. Second, the right to appeal Department antidumping determinations is a right limited to interested parties as defined under 19 U.S.C. 1677(9). Purchasers of subject merchandise do not qualify as interested parties under the provision. Purchasers who have obtained the status of "foreign producers" under the regulation, however, become interested parties in error, and are afforded the right to appeal Department antidumping determinations where no such right was intended under the law.

These effects are contrary to the Department's intention in promulgating the regulation, and inconsistent with the Department's statutory mandate to provide relief to domestic industries suffering material injury from unfairly traded imports. The Department has a statutory duty under the Tariff Act of 1930, as amended, to determine instances of dumping by examining the price at which the merchandise is first sold in the United States. The regulation at issue, as recently interpreted, confounds the Department's ability to make such a determination. Because the regulation is applicable to on-going antidumping investigations and administrative reviews, and because the application of the regulation can act to deny relief to domestic industries suffering material injury from unfairly traded imports, immediate revocation is necessary to ensure the proper and efficient operation of the antidumping law and to provide the relief intended by Congress.

The Department is not replacing this regulation with a new regulation. Instead, the Department is returning to a case-by-case adjudication, until additional experience allows the Department to gain greater understanding of the problem.

Parties are invited to comment on the Department's withdrawal of the regulation governing the treatment of tollers or subcontractors in antidumping duty proceedings. Parties should submit to the address under the **ADDRESSES** heading, a signed original and two copies of each set of comments including reasons for any recommendation, along with a cover letter identifying the commenter's name and address. To be assured of consideration, written comments must be received not later than April 28, 2008.